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December 2, 1997

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DEC 2 - 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Via Hand Delivery

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Ms. Magalie Roman Salas
Secretary
Federal Communications Commission
1919 M Street, NW
Washington, DC 20554


Re: Perry, Florida
MM Docket No. 97-205

Dear Ms. Salas:

Women in FLA Broadcasting, Inc., by its attorneys, hereby files an original and five copies of its Reply Comments in the above-referenced proceeding.

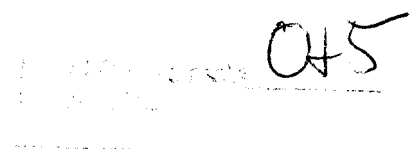
Please contact the undersigned directly if there are any questions concerning this matter.

Respectfully submitted,


David G. O'Neil

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Enclosures (6)

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

DEC 2 - 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Section 73.202(b)) MM Docket No. 97-205
Table of Allotments) RM-9161
FM Broadcast Stations)
Perry, Florida)

To: Chief, Allocations Branch
Mass Media Bureau

REPLY COMMENTS OF WOMEN IN FLA BROADCASTING, INC.

Women in FLA Broadcasting, Inc. ("Women"), by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules, hereby files its Reply Comments in response to the "Comments and Counterproposal of Dickerson Broadcasting, Inc." ("Dickerson Counterproposal") in the above-captioned proceeding.¹ As further discussed herein, the Commission must dismiss the Dickerson Counterproposal as procedurally defective because it is: (a) mutually exclusive with previously filed minor modification and "one-step" applications; (b) proposes to involuntarily change a licensee's transmitter site location without its consent; (c) proposes to involuntarily downgrade the facilities of an existing licensee without its consent; and (d) refuses to reimburse a licensee for a forced change in frequency. In support thereof, the following is respectfully submitted.

Introduction

1. Women is the licensee of FM Radio Broadcast Station

¹ The Notice of Proposed Rule Making in this proceeding permits the filing of Reply Comments by December 2, 1997. Thus, these Reply Comments are timely filed.

WDFL(FM) at Cross City, Florida. In July of 1989, the Commission amended Section 73.202(b) to substitute Channel 295C1 for Channel 292A at Cross City and modify the license of WDFL accordingly. See Perry, Florida, 4 FCC Rcd 5599, 5604 (PRD 1989). That amendment to Section 73.202(b) is now final.

2. Women timely filed a minor modification application for the new allotment at 295C1 in November of 1989.² The Commission granted Women's application in September of 1995. In October of 1995, Dickerson untimely opposed the grant and for the past two years has successfully prevented Women from constructing its new facilities. Dickerson's obstructionist tactics ultimately forced Women to have to file a new application specifying a new transmitter site.

3. On September 23, 1997, Women filed the new minor modification application to operate WDFL on Channel 295C1 (File No. BPH-970923IC).³ On November 12, 1997, DeCol, Inc. ("DCI"), licensee of FM Radio Broadcast Station WGWD at Gretna, Florida, filed an application for a one-step upgrade to Channel 227C3 (File No. BPH-971112IG). Any mutually exclusive applications, including counterproposals, for the WDFL or WGWD applications must have been filed by September 23, 1997 or November 12, 1997, respectively. Dickerson did not file a mutually exclusive application. Instead,

² Women's efforts to construct WDFL at its new authorized facilities and Dickerson's repeated efforts to prevent such construction is discussed in Women's Petition for Reconsideration filed on October 20, 1997 and is herein incorporated by reference.

³ On November 10, 1997, Dickerson filed a petition to deny Women's minor modification application. The pleading cycle has not yet been completed.

on November 17, 1997, Dickerson filed its counterproposal in the instant rule making proceeding. That counterproposal is mutually exclusive with the pending applications for WDFL and WGWD.⁴

**I. THE DICKERSON COUNTERPROPOSAL IS AN UNTIMELY
FILED RULE MAKING PROPOSAL TO TWO PENDING APPLICATIONS**

4. The Commission must dismiss the Dickerson Counterproposal as procedurally defective because it is an untimely filed rule making proposal mutually exclusive with separate pending minor modification and "one-step" applications. By definition, minor modification and "one-step" applications are cut-off from the filing of rule making proposals as of the day they are received at the Commission.⁵ In the past, the Commission has dismissed as untimely counterproposals filed after the cut-off deadline for minor modification and "one-step" applications unless the counterproposal is amended to remove the conflict with the application.⁶

⁴ The engineering Exhibit in the Dickerson Counterproposal acknowledges that its proposal is short-spaced to the 295C1 allotment for WDFL. See Engineering Statement of Radiotechniques at 3. The attached engineering statement of Richard Graham shows the short-spacing between the Dickerson Counterproposal and WGWD.

⁵ See FM Channel and Class Modifications, 8 FCC Rcd 4735, 4738 (1993); Conflicts between Applications and Petitions for Rule Making, 7 FCC Rcd 4917, 4919 (1992) (minor change applications protected from conflicting rule making proposals on date received at Commission); Rose Hill, North Carolina, 11 FCC Rcd 21223, 21229 (PRD 1996) (prior-filed one-step application protected against later-filed alternate channel proposal); Eufaula, Oklahoma, 11 FCC Rcd 4735, 4735 (Alloc. 1996) (counterproposals unacceptable if mutually exclusive with previously filed one-step application).

⁶ See FM Channel and Class Modifications, 8 FCC Rcd at 4737 n.25; Conflicts between Applications and Petitions for Rule Making, 7 FCC Rcd at 4919 (1992); Public Notice, 34705 (rel. Aug. 31,

5. That is not the case here. As discussed above, Women filed a minor modification application for WDFL and DCI filed a "one-step" application for WGWD. The Dickerson Counterproposal was filed after the cut-off deadline for filing mutually exclusive rule making proposals. Accordingly, the Dickerson Counterproposal does not meet the cut-off deadline for either application and, consistent with Commission policies and precedents, must be dismissed as untimely.⁷ Thus, any comparative analysis between Women's pending application and the Dickerson Counterproposal is inappropriate.

6. Nor can Dickerson amend its counterproposal to remove the conflict with either Women's or DCI's applications. Dickerson could have filed its rule making proposal prior to the cut-off deadline for the applications. Instead, Dickerson elected to file its counterproposal on the comment deadline. Dickerson must now bear the consequences of its filing "strategy".

II. THE DICKERSON COUNTERPROPOSAL IS TECHNICALLY AND PROCEDURALLY DEFICIENT

7. The Commission also should dismiss the Dickerson Counterproposal as technically and procedurally deficient because it: (a) would require a forced transmitter site relocation; (b) proposes an involuntary downgrade of an existing station; and (c)

1993).

⁷ Dickerson's argument that Women's application is "fatally flawed" is conclusory, incorrect and unsubstantiated. Moreover, the Dickerson Counterproposal does not allege any deficiencies regarding DCI's application.

fails to provide the required pledge for reimbursement of expenses for forcing an existing station to change frequencies. Any of these deficiencies provide more an adequate basis for dismissing the Dickerson Counterproposal.⁸

8. In Allouez, Wisconsin, 8 FCC Rcd 2809, 2809 (Alloc. 1993), the Commission dismissed a counterproposal under similar circumstances to the Dickerson Counterproposal. There, the Commission dismissed a counterproposal because it failed, inter alia, to make a reimbursement pledge, proposed an involuntary change in transmitter site without the licensee's consent and the counterproposal was short-spaced to a "one-step" application entitled to cut-off protection. As discussed herein, the Dickerson Counterproposal suffers from the same deficiencies. Thus, the Commission must dismiss the Dickerson Counterproposal as procedurally and technically deficient.⁹

⁸ See Chester, South Carolina, 7 FCC Rcd 2849, 2849 n.2 (Alloc. 1992), (counterproposal that proposed an involuntary change in transmitter site without licensee's consent and failed to include reimbursement pledge dismissed); Mary Esther, Florida, 7 FCC Rcd 1417, 1418 (Alloc. 1991) (counterproposal that did not include reimbursement pledge dismissed as procedurally defective); Augusta, Kansas, 6 FCC Rcd 2043, 2043 n.2 (Alloc. 1991) (counterproposal proposing relocation of station's transmitter site without licensee's consent and failed to include reimbursement pledge dismissed).

⁹ See Allouez, Wisconsin, 8 FCC Rcd 2809, 2809 (Alloc. 1993) (Alloc. Fort Bragg, California, 6 FCC Rcd 5817, 5817 (Alloc. 1991); Broken Arrow and Bixby, Oklahoma, 3 FCC Rcd 6507, 6511 n.2 (Alloc. 1988).

**A. THE COMMISSION CANNOT FORCE A STATION TO
INVOLUNTARILY RELOCATE ITS TRANSMITTER SITE**

9. Consistent with prevailing case law, the Commission will not force an existing station to relocate its transmitter site to accommodate a rule making proposal without the licensee's consent.¹⁰ The Commission has adhered to this policy even where the transmitter relocation would further a public interest objective. See Claremore, Oklahoma, 3 FCC Rcd at 4038. The Commission has refused to grant an involuntary change in transmitter site because of the administrative difficulty in selecting and receiving approval for a new transmitter site for an existing station and then directing the station to fund and construct those facilities. Id.

10. WDFL presently operates on Channel 292A at 29° 36' 35" N and 83° 08' 03" W. The Dickerson Counterproposal would require a change in the transmitter coordinates for WDFL to 29° 49' 21" N and 83° 11' 12" W. Women has not consented and indeed opposes this proposed forced change in transmitter sites. Absent such consent, the Commission must deny the Dickerson Counterproposal.

¹⁰ See e.g., Falmouth, Massachusetts, 10 FCC Rcd 10445, 10445 n.2 (Alloc. 1995) (counterproposal not considered because it involuntarily forced station to relocate its transmitter site); Chester, South Carolina, 7 FCC Rcd 2849, 2849 n.2 (Alloc. 1992); (counterproposal dismissed because it proposed involuntary relocation of another station's transmitter site without its consent); Augusta, Kansas, 6 FCC Rcd 2043, 2043 n.2 (Alloc. 1991) (counterproposal dismissed because it proposed involuntary relocation of another station's transmitter site without its consent); Beaumont, California, 4 FCC Rcd 7505, 7505 (Alloc. 1989) (petition dismissed because it proposed involuntary relocation of another station's transmitter site); Claremore, Oklahoma, 3 FCC Rcd 4037, 4038 (PRD 1988) (petition denied because it proposed involuntary relocation of another station's transmitter site).

11. Dickerson's claim that it will provide a preferential arrangement of allotments does not warrant forcing WDFL to change transmitter sites. To the contrary, the Commission has denied rule making proposals requesting forced transmitter site changes even when the petitions would result in a preferential arrangement of allotments.¹¹ The Commission's processes are designed to promote order and efficiency and not further speculative ventures. The Dickerson Counterproposal can not guarantee that WDFL can operate from the new transmitter site.

12. Dickerson provides no legal support for its novel theory that its proposed forced change in transmitter sites for WDFL is permissible because WDFL will have to change transmitter sites to operate on Channel 295C1. Women has pending an application to effectuate the change in Section 73.202(b). The Dickerson Counterproposal, however, transparently proposes a forced change in transmitter sites for WDFL not on the frequency allocated to Cross City in Section 73.202(b), but as part of an involuntary downgrade and change in frequency for the benefit of Dickerson.

**B. THE COMMISSION CAN NOT FORCE A STATION TO
INVOLUNTARILY DOWNGRADE ITS FACILITIES**

13. Likewise, the Commission will not force a licensee to downgrade its facilities without its consent. See, e.g., Columbia, South Carolina, 3 FCC Rcd 6881, 6883 (PRD 19982) (Commission will

¹¹ See also Beaumont, California, 4 FCC Rcd at 7505 (petition denied even though it proposed first local service); Claremore, Oklahoma, 3 FCC Rcd at 4038 (petition denied although it proposed wide area service).

not construe licensee's express willingness to downgrade on one channel as blanket expression of interest to downgrade on all channels). In that case, as is the case here, the Commission denied a counterproposal that would force a licensee to involuntarily downgrade its facilities.

14. If the Commission refused to involuntarily downgrade a station on a different channel than originally proposed without its consent, then the Commission must dismiss the Dickerson Counterproposal for seeking an involuntary downgrade of WDFL where Women has not proposed such a downgrade. Women has not consented to downgrading WDFL. Instead, Women has pending a mutually exclusive and previously filed application to operate WDFL on Channel 295C1.

**C. THE DICKERSON COUNTERPROPOSAL MUST BE
DISMISSED BECAUSE IT FAILS TO PLEDGE
TO REIMBURSE WOMEN FOR ITS EXPENSES**

15. The Commission should also dismiss the Dickerson Counterproposal for failing to promise to reimburse Women for the reasonable and prudent expenses associated with changing frequencies for WDFL. Dickerson is required to reimburse Women because Dickerson benefits from the proposed change in frequency.

16. A licensee forced to change its channel is entitled to compensation from the party that benefits from the change.¹² The

¹² See Circleville, Ohio, 8 FCC 2d 159 (1967); Allouez, Wisconsin, 8 FCC Rcd 2809, 2809 (Alloc. 1993); Chester, South Carolina, 7 FCC Rcd 2849, 2849 n.2 (Alloc. 1992); Mary Esther, Florida, 7 FCC Rcd 1417, 1418 (Alloc. 1991); Portageville, Missouri, 6 FCC Rcd 4398, 4398 n.1 (Alloc. 1991); Augusta, Kansas, 6 FCC Rcd 2043, 2043 n.2 (Alloc. 1991).

displaced party is entitled to compensation even if it requests and receives a class upgrade.¹³

17. The Dickerson Counterproposal proposes to change frequency for WDFL for Dickerson's benefit yet refuses to reimburse Women for its expenses in changing frequencies for WDFL. Thus, Dickerson was obligated to include in its counterproposal a reimbursement pledge to Women for the reasonable and prudent expenses for changing frequency for WDFL. The Dickerson Counterproposal did not include this pledge. Indeed, Dickerson has refused to make any such pledge.

18. Dickerson argues that it is relieved of its obligation to reimburse Women because Women is required by the Commission to move to Channel 295C1. This claim is contrary to Commission policy, which requires Dickerson to reimburse Women for a change in frequency, even where Women has requested and received a class upgrade. See Id. The Commission has amended Section 73.202(b) for Cross City and instructed WDFL to vacate Channel 292A and operate on Channel 295C1. That amendment is final. The Dickerson Counterproposal is an untimely filed counterproposal to force WDFL to operate on a different channel to Dickerson's benefit and Women's detriment. Dickerson is therefore required to reimburse Women for its reasonable and prudent expenses. Dickerson has failed to make this pledge. The Commission must dismiss its counterproposal.

¹³ See Lonoke, Arkansas, 6 FCC Rcd 4861, 4862 (Alloc. 1991) (petitioner required to reimburse licensee for expenses for changing frequency even if licensee can upgrade facilities).

Conclusion

The Commission must dismiss the Dickerson Counterproposal because it was not technically and procedurally correct at the time it was filed. It is procedurally defective because it is an untimely filed rule making proposal that is mutually exclusive to pending minor modification and "one-step" applications. It is also technically and procedurally defective because it proposes an involuntary change in transmitter site for WDFL without its consent, proposes an involuntary downgrade for WDFL without its consent, and refuses to reimburse Women for its reasonable and prudent expenses in changing frequency. Any of these deficiencies alone are sufficient for dismissing the Dickerson Counterproposal. Combined, they are an overwhelming mandate for dismissal.

WHEREFORE, for the foregoing reasons, Women in FLA Broadcasting, Inc. respectfully requests that the Commission dismiss Dickerson Broadcasting, Inc.'s Counterproposal in this rule making proceeding.

Respectfully submitted,

WOMEN IN FLA BROADCASTING, INC.

By:



Robert J. Rini
David G. O'Neil

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December 2, 1997

Its Attorneys

GRAHAM BROCK, INC.

BROADCAST TECHNICAL CONSULTANTS

WOMEN IN FLORIDA BROADCASTING
REQUEST TO DISMISS
COUNTERPROPOSAL TO MM DOCKET #97-205
BY DICKERSON BROADCASTING, INC.
December 1997

TECHNICAL EXHIBIT

Copyright 1997

WOMEN IN FLORIDA BROADCASTING
REQUEST TO DISMISS
COUNTERPROPOSAL TO MM DOCKET #97-205
BY DICKERSON BROADCASTING, INC.
December 1997

This Technical Exhibit supports the request by Women in Florida Broadcasting ("Women") to dismiss the counterproposal submitted by Dickerson Broadcasting, Inc. ("Dickerson") to MM Docket 97-205, Perry, Florida. Dickerson counterproposed the allocation of Channel 228A at Perry, Florida, downgrading the Channel 295C1 allocation at Cross City to Channel 227C3 while simultaneously allotting Channel 249A to Perry among other changes to §73.202.¹

Exhibit #1 is a computerized printout of the Channel 227C3, Cross City, proposal demonstrating that this allocation is shortspaced to the one-step application submitted by De Col, Inc., licensee of WGWD, Channel 227C3, Gretna, Florida.² By this reference the counterproposal forwarded by Dickerson is contrary to the spacing requirements of §73.207 of the Commission's rules.

We have tried to be as accurate as possible in the preparation of this report. Should there be any questions concerning the information contained herein, we welcome the opportunity to discuss the matter by phone at 912-638-8028.

-
- 1) Channel 227C3, Cross City, Florida, at North Latitude 29° 49' 21", West Longitude 83° 11' 12" - site restricted 22 km north of Cross City. Channel 249A at Perry, Florida, at North Latitude 30° 01' 55", West Longitude 83° 28' 45" - site restricted 13.7 km southeast of Perry.
 - 2) Also to the allocation site specified for Channel 227C3 in Gretna.

Graham Brock Inc. - Broadcast Technical Consultants
St. Simons Island GA - Washington DC

DICKERSON COUNTERPROPOSAL
DOWNGRADED CROSS CITY ALLOCATION

REFERENCE	CLASS C3	DISPLAY DATES
29 49 21 N		DATA 11-28-97
83 11 12 W	Current rules spacings	SEARCH 12-02-97
----- CHANNEL 227 - 93.3 MHz -----		

CALL TYPE	CH# LAT	CITY LNG	STATE PWR	BEAR' HT	D-KM D-Mi	R-KM R-Mi	MARGIN (KM)
AD228	228A	Perry	FL	311.3	49.60	89.0	-39.40 *
AD	30 07 00	83 34 26	0.000 kW	OM	30.8	55.3	
		Frank Vela			RM9161		970819
>Site Restriction 0.8 km East							
WGWD.A	227C3	Gretna	FL	301.8	143.57	153.0	-9.43 *
AP ZCN	30 29 48	84 27 33	8.700 kW	152M	89.2	95.1	
		De Col, Inc.			BPH971112IG		
>Change from Channel 227A per one-step application							
ALOPEN	227C3	Gretna	FL	305.7	147.10	153.0	-5.90 *
AL N	30 35 21	84 26 01	0.000 kW	OM	91.4	95.1	
>To Channel 227C3 per one-step application							
WPLA	227C2	Callahan	FL	62.1	177.05	177.0	0.05 <
LI CN	30 33 22	81 33 13	50.000 kW	141M	110.0	110.0	
		PAXSON JACKSONVILLE LICENSE L			BLH950822KA		
WFLZ	227C	Tampa	FL	157.5	237.27	237.0	0.27 <
LI CY	27 50 32	82 15 46	100.000 kW	414M	147.5	147.3	
		Jacor Broadcasting of Tampa B			BLH880627KA		
WGWD	227A	Gretna	FL	301.3	158.70	142.0	16.70
LI ZCN	30 33 24	84 36 05	6.000 kW	100M	98.6	88.3	
		De Col, Inc.			BLH930805KA		
>Change to Channel 227C3 per one-step application BPH-971112IG.							
WOGK	229C	Ocala	FL	119.7	123.54	96.0	27.54
LI CN	29 16 06	82 04 51	100.000 kW	411M	76.8	59.7	
		Ocala Broadcasting Corporatio			BLH870915KA		
WAAC	225C1	Valdosta	GA	351.6	109.97	76.0	33.97
LI CN	30 48 13	83 21 20	100.000 kW	153M	68.3	47.2	
		Wgov, Inc.			BLH860903KD		

EXHIBIT #1
WOMEN IN FL BROADCASTING
REQUEST TO DISMISS
COUNTERPROPOSAL TO
MM DOCKET #97-205 BY
DICKERSON BROADCASTING, INC
December 1997

AFFIDAVIT AND QUALIFICATIONS OF CONSULTANT

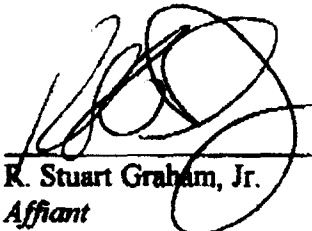
State of Georgia)
St. Simons Island) ss:
County of Glynn)

R. STUART GRAHAM, being duly sworn, deposes and says that he is an officer of Graham Brock, Inc. Graham Brock has been engaged by Women in Florida Broadcasting to prepare the attached Technical Exhibit.

His qualifications are a matter of record before the Federal Communications Commission. He is a graduate of Auburn University and has been active in Broadcast Engineering since 1972.


The attached report was either prepared by him or under his direction and all material and exhibits attached hereto are believed to be true and correct.

This the 2nd day of December, 1997.



R. Stuart Graham, Jr.
Affiant

Sworn to and subscribed before me
this the 2nd day of December, 1997



Notary Public, State of Georgia
My Commission Expires September 12, 1999

CERTIFICATE OF SERVICE

I, Lajuan A. Simmons, a secretary with the law firm of Rini, Coran & Lancellotta, do hereby certify that I have caused a copy of the foregoing "Reply Comments of Women in FLA Broadcasting, Inc." to be mailed, first-class, postage prepaid this 2nd day of December 1997 to the following persons:

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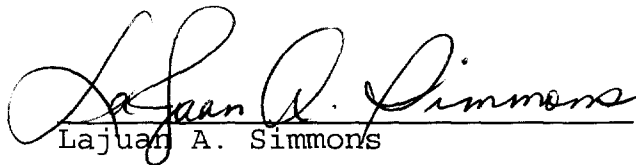
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Lajuan A. Simmons

* Via Hand Delivery